CHAPTER XIX.

MUNICIPALITIES.

The similarity between the East and the West in the matter of village communities has been demonstrated by Sir H. S. Maine and other writers, and it might from this be supposed that "the institutions of free cities and boroughs," which Hallam calls "one of the most important and interesting steps in the progress of society" in Mediæval Europe, would have had its counterpart under some of the Native Governments of this country.

This however is not found to be the case, nor is it surprising, as the village communities had nothing in them of the principle of popular representation or local self-government. Municipal institution are in India the creation of our Government, and except in the Presidency towns date only from the passing of Act 26 of 1850. This was for this Presidency superseded by Bombay Act 6 of 1873, which, while it made an advance in some points in the principles of representation and responsibility, made the establishments of Municipalities altogether dependent on the will of Government. This Act contains the whole of the law on the subject now in force in this Presidency, though Act 24 of 1879 is chiefly brought into action with regard to Municipalities. The rules under it are therefore given in this chapter.

The orders of the Government of India on the subject of local self-government which are contained in their Resolutions Nos. $\frac{17}{747\text{-}59}$ and 1521, dated respectively the 18th May and 4th Oct. 1882, may be expected to work an entire change in the constitution and powers of Municipalities, which will for the first time become truly self-governing bodies, whether for the better or for the worse remains to be seen. The important orders contained in this chapter on the subjects of taxation and loans to Municipalities are not likely to be affected by the new policy.

A Municipal Act Amendment Bill, which will, like the Local Boards Bill, greatly alter the constitution of the bodies to which it relates, is now before the Legislative Council of the Governor of Bombay.

1. **Creation of Municipalities.**—As a general rule, Government do not desire to retain Municipalities or to create new ones in plăces of less than from 3,000 to 4,000 inhabitants, unless they contain a considerable proportion of intelligent non-agriculturists, or are the principal towns of talukas. Government will not create City Municipalities without clear evidence that the population in general, and their representatives, the existing Municipal Commissioners, have by their intelligence and adoption of sanitary and other improvements, as evinced by the state of their city, established a claim to superior powers of self-government. It may be added that in purely agricultural villages, even if the population reach 4,000 or 5,000, a Municipality may be undesirable.—*G. R. No.* 1631, *June* 11, 1874.

2. **Powers of Commissioners.**—It is clearly beyond the province of a Municipality to frame rules to regulate the appointment or removal of members of its own body. The rules they are authorized to prepare and submit for sanction are those which have for their object the efficient administration of the affairs of the Municipality after that body has been appointed.

3. A Municipality has no authority to demolish any portion of the town walls without obtaining the previous sanction of Government. The Collector should report the matter to Government directly any such Resolution is passed by the Municipality. It is for Government alone to decide whether any town is to remain enclosed or fortified, and how the land occupied by existing ramparts or ditches is to be disposed of. The Revenue Commissioner should take care that no invasion of the rights of Government is made by any Municipality. In such case no appropriation of the land, if it should have been made, can be upheld.—*G. R. No.* 634, *March* 3, 1871.

4. Municipal Commissioners, who are not Government officers, and whom the Legislature has placed, in matters within their jurisdiction, in an independent position, should, as a general rule, be left like similar bodies at home, to defend the legality of their own proceedings, and not be allowed to call on Government to inquire into the merits of every individual case in which the propriety of their decisions may be arraigned.

In complicated cases where the legality of the proceedings which form the grounds of action may be open to grave doubts, a reference

may be made to Government to obtain the opinion of the Legal Remembrancer, but this cannot be necessary in trival cases.—*G. R. No.* 2612, *Nov.* 5, 1859.

5. **Powers of Commissioners.**—Voting by proxy is not allowed by the Municipal Act.—*G. R. No.* 2938, *Sept.* 25, 1875.

6. The power and responsibility for carrying out the purposes of the Act vested in the Commissioners in City Municipalities and in the President finally in Town Municipalities includes the power to reappropriate balances.—*G. R. No.* 1435, *May* 20, 1874.

7. The Act does not give Government the power of prescribing what accounts, budget forms, or other internal arrangements a Municipality must adopt, but only of prescribing the form of accounts to be sent under Sec. 90*.—*G. R. No.* 2886, *Oct.* 8, 1874.

8. **Rules under Section 14 —**

It will be sufficient if one copy of the rules is forwarded to Government for record with the signatures of the Commissioners and the date of their adoption noted upon them. Town Municipalities have never, so far as Government are aware, been brought into the High Court, and should suits against them ever proceed so far, there will be no difficulty in forwarding to the High Court, as the occasion arises, a copy of the local Municipal rules with the other papers in the case.—*G. R. No.* 2173, *July* 25, 1877.

9. Care must be taken, in all Municipal affairs, to see that nothing is done for which authority does not clearly exist in the Act or Rules. Great attention must also be paid to the recording of all Municipal acts done by the Municipality and their officers, fully and in a business-like manner. The procedure which the Rules for the time being lay down must be strictly carried out. If it is cumbersome, the Rules can be altered, but as long as the Rules stand they must be obeyed, and executive officers must not usurp the functions of Managing Committees, or *vice versâ*.—*G. R. No.* 3630, *Dec.* 28, 1874.

10. The High Court has ruled that the power given to Municipal Commissioners, in Sec. 6,† of the old Act of making rules cannot warrant the making of rules inconsistent with the Act, even though they may be sanctioned by the executive Government.—*H. C. Reports, Oct.* 4, 1871.

* See Order No. 12.

† The Judgment seems to apply equally to Sec. 14 of the present Act.

11. In all proposals for a change in the rules the precise change which it is proposed to make in the language of the existing rules should be definitively stated, and the exact shape in which the rule will appear after alteration should be formally set forth.—*G. R. No.* 918, *April* 4, 1871.

12. **Accounts.**—The form of accounts prescribed under Sec. 90, is given, and they are to be sent with the Administration Report. —*G. R. No.* 3053, *Sept.* 27, 1876, *and No.* 1555, *May* 16, 1878.

13. The examination of Municipal accounts is an important part of the duty of Collectors and Assistants, and is to be properly and punctually attended to.—*G. R. No.* 4590, *Dec.* 2, 1872.

Under paragraph 2 of G. of I. No. 2679, Aug. 31, 1878, Government servants may, subject to certain limitations, be allowed to receive fees for auditing accounts of Municipalities.—*G. of I. No.* 209, *Oct.* 25, 1878.

A Local Government may, however, sanction an addition to the pay of any officer employed under its orders for the performance of any special duty, outside the duties of his regular appointment as a charge against any Fund administered under the Local Government, including Municipal or Port Trust Funds, or Ward's estates. —*G. of I. No.* 2679, *Aug.* 31, 1878.

14. **Annual reports.**—All Municipalities are required to prepare and submit on April 1st a report showing the results of Municipal administration during the year.—*G. of I. with G. R. No.* 1091, *April* 3, 1878.

The Municipal reports of Commissioners should be sent in to Government by 15th October.—*G. R. No.* 1770, *June* 4, 1881.

15. Assistant Collectors are to notice in their annual reports what has been done and spent on sanitation by Municipalities.— *G. R. No.* 414, *Feb.* 10, 1874.

The sanctioned form for Municipal Administration Reports is given in Appendix L.

16. **Buildings.**—All buildings of any of the following descriptions, together with all their appurtenances, are exempted from the operations of section 17 of the Act :—

Government Offices, including Post offices ;

Court Houses ;

Police Stations, and all buildings under the control of the Police, Chowries, Jails, Civil and Criminal, except chowkies constructed from Municipal funds;

Churches;

Hospitals and Dispensaries except dispensaries conducted from Municipal funds;

Public Schools and other buildings under the control of the Educational Department;

Travellers' bungalows and such Dárámsalás as may be specially exempted;

Forts;

Ancient ruins of churches, forts, or other public buildings;

Piers, jetties, &c., under the control of the Customs Department; and

All buildings belonging to Government, as distinguished from those specified in Section 17, Act VI. of 1873, as meant for the accommodation of the local public.*—*G. R. No.* 3058, *Oct.* 7, *and No.* 3571, *Nov.* 29, 1875; *No.* 1464, *May* 10, 1876; *and No.* 1338, *April* 24, 1878.

NOTE.—Special reservations have also been made of particular buildings in various places.

17. **Buildings.**—Municipal buildings are to be reserved for public purposes, and nautches, 'kirtans,' or religious ceremonies should not be held or performed in them.—*G. R. No.* 2044, *July* 26, 1871.

18. **Unclaimed property.**—The proceeds of unclaimed property cannot be made over to the Municipalities within whose limits it is found, but must be credited to Imperial revenue.—*G. R. No.* 361, *Feb.* 20, 1867.

19. **Land.**—No land or other immovable property belonging to Government is to be transferred to Municipalities except under such rules and conditions as Government may prescribe.—*G. R. No.* 1894, *July* 13, 1871.

Municipalities have no claim to the assignment of the land revenue assessed upon lands within their limits which, like all land revenue, is an imperial asset. The Governor General in Council is

* This exemption appears from the preamble of the Government Resolution to apply to buildings the property of Government, but used as dwelling houses of Government servants.

wholly opposed to the alienation of this revenue to Municipalities and no such alienation should be made hereafter."—*G. of I. No.* 2128, *Dec.* 31, 1879.

20. **Waste land.**—No Municipality is allowed to take rent for Government waste land within its limits unless specific permission to do so has been given by Government.—*G. R. No.* 3304, *Sept.* 24, 1873.

21. Under Section 17 of Bombay Act VI. of 1873 all "*public* spaces" are vested in the Municipality. The term does not include building sites and open pieces of land, the property of Government, but not used by or open to the public. Such can only be made over to Municipalities under the provisions of G. R. No. 4342, July 29, 1873, (See chapter IX., order 3).—*G. R. No.* 871, *March* 23, 1875.

22. The Collector, as representative of the interests of Government, has power to decide whether any plot of land alongside roads should be held to be, under the last order, Municipal or Government property, referring for the orders of Government any case which may appear doubtful.

Practically there should seldom be any doubt. In a crooked street or road of varying width, any bits of land between the houses and the roadway may be taken to be municipal property, but not detached separate sites between houses, even though from their not having been enclosed, they may have been open to the public.—*G. R. No.* 2193, *July* 23, 1875.

23. **Acquisition of land.**—It would be a good thing if Municipalities would purchase by private agreement land near railway stations which is in the occupation of individuals, especially where it may be in contemplation to construct roads.—*G. R. No.* 4875, *Dec.* 2, 1865.

24. A form is prescribed for adoption whenever land is to be taken on behalf of Municipalities under Act X. of 1870.—*G. R. No.* 6707, *Nov.* 9, 1877.

25. **Principles of taxation.**—The following order gives the principles which are to govern the imposition of municipal taxation, and more especially that portion of it which is levied under the name of octroi or town duties:—

"Town duties are very effective for raising money. They existed under the Native *régime* under the name of *choonghee*, or handful,

implying that everything that passed had to pay a small contribution, and in some parts of India they are more popular than direct taxes of any kind. If they could be confined to things consumed in the town without interfering with the transit trade, they would be only open to the objection that they fall in undue proportion upon the poor. But after a full trial of this tax in Bengal and the North-Western Provinces it was abolished in 1835, as being alike injurious to the general trade and to the towns immediately affected, and as not being capable of effectual remedy by any contrivances of bounded warehouses or drawbacks. Town duties have been lately re-established as a municipal tax in many places, and the old vice of interference with the general trade immediately re-appeared with the additional aggravation that this time the public at large were mulcted for the advantage of local interests.

"The town duties which were abolished in 1835 were levied only upon eight articles of local consumption, but there appears to be no limit to the number of articles upon which they are now exacted as a municipal tax. The tax ought to be confined to a few articles of local consumption, such as ghee, firewood, fruit, vegetables, fowls, eggs, and animals for slaughter which do not enter into the general trade of the country, and which being recognizable at first sight, do not involve the stoppage and search of other commodities.

"In all parts of India municipal taxation is largely on the increase, and there is a growing tendency to overlook, for the sake of small local improvements, the real injury that is being inflicted upon important general interests.

"It is not necessary to recapitulate here any of the standard arguments against transit duties. Such duties have long since been condemned by universally accepted maxims of policy, and the principle that town duties are a tax on the consumption of the towns for whose benefit they are levied, and that they should on no account be extended to any article belonging to the transit or general trade, ought to be jealously guarded.

"In wealthy communities, like those of Europe, it may be admitted that the balance of argument is in favour of raising municipal revenues by direct taxation only, and leaving the local trade entirely free. But in so poor a country as India it will be more commonly the best course to combine direct with indirect taxation; for by this means alone can a sufficiently broad base be secured for raising a sufficient income without undue pressure on individuals. So long as

octroi duties on grain and other articles of consumption are kept at a moderate rate they do not injuriously affect small retail transactions, with which the poorer classes are mainly concerned. That such duties are commonly far more popular in India than any direct taxation is a strong argument in their favour, and the prejudice against them, founded on the common practice of England, should not be allowed to prevent their introduction, under suitable limitations, where there is reason to think that the general feeling would be to prefer them to other forms of taxation.

"On the other hand, a municipal body can have no claim to take tolls on traffic entering its boundaries by roads or canals. Such imposts are merely a means of raising money from the commerce of the country for the benefit of the town in which they are levied. It may be quite legitimate for a municipality to levy a toll on a road or bridge constructed within its own limits and for the convenience of the town; but when the cost of the work has been recovered the road or bridge should be thrown open to the public, or the toll reduced to the minimum necessary to keep the work in proper repair."

In accordance with the above principles several orders were issued, which are summarized in the Resolution given below:—

For several years past Her Majesty's Secretary of State for India and the Government of India have, from time to time, impressed on Local Governments that town duties in Municipalities should not be allowed to degenerate into transit duties, or to operate in restraint of trade, or to affect injuriously imperial sources of revenue. In the Resolution* issued by the Government of India in 1868, the case is thus stated:—

* No. 4440-47, dated 6th November 1868.

"Such duties should be restricted to articles actually consumed in the towns, and should not be imposed upon articles of general commerce, or interfere with the natural course of transit trade. The Government of India has reason to believe that these sound principles, the truth of which has been established by the prolonged experience of those countries of Europe in which octroi duties form commonly a source of municipal revenue, have been frequently lost sight of, and that to meet the burden of an annually increasing expenditure upon police, education, or sanitary improvements, a widespread system of taxation has been introduced, injurious to interests on which the burden in a great measure falls, and standing in the way

of the proper development of the commerce of the country. It is to little purpose that the Imperial Government reduces or abolishes customs duties in the interests of trade, if municipalities are permitted to levy duties on articles of commerce passing through their limits. In all parts of India municipal taxation is largely on the increase, and there is a growing tendency to overlook, for the sake of small local improvements, the real injury that is being inflicted upon important general interests. The Government of India does not consider it necessary to recapitulate here any of the standard arguments against transit duties. Such duties have long since been condemned by universally accepted maxims of policy."

2.—The Government of India, at the same time, laid down the general principles by which the levy of octroi duties should be regulated. It was declared that town duties on articles of consumption should be so adjusted as to fall entirely on the population of the town for the benefit of which the taxation was imposed, and that a jealous guard should be kept against the extension of octroi to any article entering into the transit or general trade of the country. The articles on which, having regard to these principles, local duties might legitimately be imposed, were enumerated as follows:—

(1) articles of food or drink for men or animals;
(2) animals for slaughter;
(3) articles used for fuel, for lighting or for washing;
(4) articles used in the construction of buildings;
(5) drugs, gums, spices, perfumes, and
(6) tobacco.

A list was also given of commodities on which the levy of octroi duties was prohibited. It comprised—

(1) articles liable to customs duty and imported into India by sea
(2) salt;
(3) opium, and
(4) fermented or spirituous liquors manufactured in India, and drugs liable to excise or abkári duty.

This classification was devised with the object of preventing municipal duties from encroaching on imperial taxation, and of guarding against the sacrifice of important general interests (to use the words already quoted) for the sake of small local improvements. Instructions were at the same time given for the refund of duties when goods were re-exported from towns; and for providing bonded warehouses for the storage of goods in transit.

3.—In 1871,* yielding to the strong representations made by certain Local Governments, the Government of India allowed the following classes of commodities to be added to the list of dutiable goods, *viz.*—

* Home Department Nos. 88-91, dated 6th January 1871.

(1) piece-goods and other textile fabrics and manufactured articles of clothing and dress;

(2) metals and articles of metal:

provided that the duty should not exceed one and a half per cent. *ad valorem*. In other respects, the orders of 1868 were maintained in force, and it was especially laid down that "no municipality should be allowed to levy octroi on articles of through trade, unless it has been certified, to the satisfaction of the Local Government, that adequate arrangements have been made by means of bonded warehouses, or drawbacks or otherwise, for exempting from duty articles declared to be in transit through a town, or which the owners have no immediate intention of selling for local consumption."

4.—The latest circular issued on the subject of town duties was the Resolution of the 28th September 1877, No. 2-96, which reiterated previous orders, and expressed a desire that Local Governments and Administrations would take early steps to alter octroi taxation in towns where such taxation transgressed against acknowledged principles. In this Resolution the orders of 1868 were thus referred to:—"the Government of India are glad to acknowledge that for some time better arrangements were made, and that a general desire was exhibited to comply with the instructions isssued, but of late years, owing either to the relaxation of vigilance on the part of Local Governments and Administrations, or to other causes, the Government of India have seen with concern that in isolated places octroi has again exceeded its proper limits, and is at the present moment in different parts of the country acting as a tax on through traffic and affecting injuriously the general trade of the country."

The orders contained in this Resolution received the entire approval of Her Majesty's Secretary of State for India.

5.—The subject has also attracted the attention of the commercial community, and more particularly of the Bombay Chamber of Commerce. This body has on more than one occasion drawn the attention of the Governor-General in Council to cases in which the

town duties levied by Municipalities were excessive, whilst the impossibility, or at any rate the difficulty, of obtaining refunds on re-export practically had the effect of converting the town duties into transit duties. Their criticisms were fully borne out in several instances by facts elicited in a general review of octroi administration; and, as it thus became apparent that the Government of India had failed to secure the execution of the orders issued in 1868 and 1871, and re-affirmed in 1877, it was thought advisable to have resort to the more stringent expedient of legislation. With this object a Bill was introduced into the Legislative Council of the Governor-General and was circulated for the opinion of Local Governments and Administrations.

6.—The replies received from Local Governments and Administrations contain much valuable information on the subject of municipal taxation, and have been carefully considered by the Governor-General in Council. From them it appears that the question is full of difficulties; and, before proceeding further with the proposed legislation, it seems desirable that a further effort should be made to secure the objects in view by executive direction.

At the same time it should be fully understood that the Government has in no way receded from its declared policy with regard to town duties. The latest municipal reports of the several Provinces show that there are still many cases in which the orders of the Government of India have been, and continue to be, contravened, and as general instructions have failed to secure the observance of sound principles in octroi administration, it is evidently necessary to deal with errors of practice in detail.

7.—At present the only available standard of reference for testing the average consumption of the various octroi paying articles per head of the population within municipal limits is that framed some years ago by the Government of the North-Western Provinces. It has been objected that any conclusions obtained from the employment of such a test as this must be fallacious, because the estimated consumption, as deduced from applying the standard rates to the registered town population, takes no account of the average consumption of the rural population in the neighbourhood of Municipalities, who make purchases in the municipal market, and who may fairly be called upon to contribute to the cost of the municipal institutions by which they benefit; or of the fluctuating population which swells the returns of many towns on the occasion of

fairs and religious gatherings. These objections are not without force, but allowance can always be made for such exceptional circumstances, and the Governor-General in Council believes that the standard of average consumption framed by the Government of the North-Western Provinces (which is given in the margin) is sufficiently accurate for purposes of general comparison. Hereafter, it will be for each Local Government and Administration to compute standards suitable to the particular circumstances of the towns under its administration in which octroi is levied, and to satisfy itself that no departure is made from these standards without good and sufficient reason. After referring in detail to numerous Municipalities in different parts of India in which the principles laid down for octroi taxation have been transgressed, the Resolution goes on to say:

Class I.	Grain, 7 maunds, per head per annum. Refined sugar, from 5 to 6 seers, per head per annum. Unrefined sugar, 15 seers, per head per annum. Ghi, from 3 to 4 seers, per head per annum.
„ III.	Oil, and oil-seeds, 4½ seers of oil, per head per annum.
„ V.	Drugs, gums and spices, from Re. 1 to Rs. 1-4, per head per annum.
„ VI.	Tobacco, 4 seers, per head per annum.
„ VII.	Cloth, from Rs. 4 to Rs. 6, per head per annum.
„ VIII.	Metals, Rs. 1-8 to Rs. 2, per head per annum.

"From the above figures, considered as a whole, it will be abundantly evident, either that Local Governments have not yet succeeded in imposing efficient checks on all Municipalities, or that the standards selected for comparison are generally inapplicable. In the latter case, it is for the various Governments and Administrations concerned to set about the preparation of tables of average consumption, sufficiently accurate to enable them to deal confidently with transgressions against the accepted principles of octroi administration. In the meantime the statistics already furnished are at least significant enough to give grounds for full and individual enquiry in each of the instances to which attention has been drawn. After the completion of these enquiries, it will remain to decide whether, in each case, (1) further time shall be given to the offending Municipality to amend its ways; or (2) it shall be prohibited from levying octroi on a certain article or articles; or (3) it shall be required to raise its income in some other manner. If the first or the second of these courses be adopted, the system of

municipal administration in force must be thoroughly reviewed, and suitable arrangements must be made, either by means of bonded warehouses or of refunds, to confine the town duties within their proper limits as a tax on local consumption. The Governor-General in Council has no desire to render obligatory on all Municipalities the establishment and maintenance of bonded warehouses. Such warehouses are probably unsuited for petty Municipalities where there is little, if any, through trade; but there must be many large centres of trade where it will be desirable, and possibly indispensable, to establish them in such form as may be considered suitable, and within or without municipal limits at the discretion of the Local Government. If bonded warehouses should be considered unnecessary in any particular Municipality, it will be all the more important to see that a proper system is introduced for the refund of octroi on articles in transit through the town. The period within which refunds should be claimable, the minimum quantity or value of the articles exported on which refunds should be allowed, and the nature of the proof to be required that duty has been originally paid on importation, are matters of detail which can be settled according to the discretion of the Local Government. But nothing should be left undone to render the system as simple as possible, and to provide every practicable facility for the grant of refunds to *bonâ fide* exporters."

It has further been ordered that tolls on entering municipal limits should not be levied except for the use of any bridge, quay, wharf, lock, or other work constructed or maintained at the cost of the Municipality, and that goods, the property of Government, should be exempt from municipal taxation.—*G. of I. No.* 4440, *Nov.* 6, 1868; *No.* 88, *Jan.* 6, 1871; *No.* 297, *Sept.* 28, 1877; *and No.* $\frac{2}{104\text{-}115}$, *Nov.* 9, 1880.

The system of direct collection of octroi duties must be introduced into all Municipalities where octroi is levied.—*G. of I. No.* 297, *Sept.* 28, 1877.

The system of farming out the collection of octroi duties has been condemned and its revival cannot now be permitted.—*G. R. No.* 1556, *June* 1, 1880.

The Government of India cannot too emphatically condemn the imposition of taxes on articles which have, by the Imperial Government, been relieved of burdens, such, for instance, as a high duty on wheat.—*G. of I. No.* 297, *Sept.* 28, 1877.

The intention of the orders of 1871, was to permit the levy of octroi on metals and articles of metal imported into India by sea subject to this one condition only, viz., that the rate of octroi levied should not exceed one and a half per cent. *ad valorem.*—*G. of I. No.* 39, *April* 1, 1882.

26. With reference to refunds and bonded warehouses Government left it to the various Municipalities to propose their own rules, the following being the chief questions to be decided :—

(*a*) Whether refunds should be allowed on goods that having entered municipal limits and paid municipal taxes have broken bulk or changed hands or undergone both operations.

(*b*) The limit of time within which if allowed, such refunds may be made.

(*c*) Whether or no bonded warehouses should be established.

[And on this the following orders given in Sind have been circulated as sufficiently meeting the views of the Government of India] :—

(1) Whether goods have changed hands or not, refunds must be given.

(2) Transferable receipts on goods imported which have paid octroi are to be given, and these receipts change hands with the goods, and on them a claim for refund is based. Moreover, a number of receipts are given each of a fixed minimum value, so that if only a fraction of the goods imported changes hands and is then exported, receipts to cover that value pass with the goods.

(3) As regards goods breaking bulk, refunds are similarly granted on export, but the Municipality can send a special officer to witness the opening of certain classes of packages and to make suitable notes on the receipts already given, for whose attendance a light fee is charged.

(4) With reference to (*b*) it is assumed that Government will be content with the latitude allowed for re-export under Act VI. of 1873, and two years has been fixed as the limit of time within which refunds must be made.

(5) With reference to bonded warehouses, there are two objections: one the unwillingness of certain traders to use them, and the other not less serious the heavy cost of their construction and maintenance. They are not therefore insisted on, but the refund rules are in every case to be submitted for approval, and made as clear as possible.—*G. R. No.* 1331, *April* 24, 1878.

"Refunds as low as Rs. 2 ought to be granted, and they should not be refused because goods have changed hands or broken bulk, suitable measures being taken to insure identification."—*G. R. No.* 2047, *June* 28, 1881.

27. **Octroi taxation.**—Government do not direct that the levy of municipal octroi duties now paid on articles such as piece goods and metals should be discontinued. The levy of octroi on such articles remains permissible, provided that it is not allowed to become a transit duty, and that it does not exceed the prescribed $1\frac{1}{2}$ per cent. *ad valorem* rate. What Government have directed is that no new octroi duty should hereafter be imposed on articles which being now subject to the payment of customs duties and not being liable to municipal octroi, may at some future date be exempted from custom duties.—*G. R. No.* 1462, *May* 7, 1878.

28. The imposition of octroi duties on articles which being liable to taxation under the Indian Tariff Act have since been exempted by the Government of India, cannot be permitted.—*G. R. No.* 1168, *April* 10, 1878.

29. Export duties are not to be proposed for municipal purposes when less objectionable imposts can be devised. The communities themselves should, as far as possible, support their own Municipalities, and this end can best be maintained by the imposition of import rather than export duties, since it may be assumed that export duties would generally fall on the consumer outside the town.—*G. R. No.* 545, *March* 31, *and No.* 876, *May* 19, 1865.

Government have no objection to an octroi tax being imposed by Municipalities on firewood imported by the Forest Department for sale.—*G. R. No.* 3214, *Oct.* 23, 1878.

Octroi may be levied on cocoanuts and betelnuts which are produced in India and have not paid Customs on import by sea.—*G. R. No.* 3490, *Oct.* 18, 1882.

30. **Tolls.**—The principles as to tolls are here more fully stated.

Municipalities are not to raise a revenue by transit duties under the name of tolls on goods conveyed in vehicles passing through their limits, but may levy *bonâ fide* tolls on vehicles or animals from outside those limits using their roads or bridges, for the purpose of maintaining their roads, in the same way as wheel tax is levied on vehicles kept inside the limits.

There is no objection under the rules of the Government of India to tolls being maintained if two points are borne in mind. First, that they should not be imposed on outside vehicles unless wheel-tax or some equivalent impost is paid by residents. Second, that a larger revenue should not be raised from tolls than is equivalent to the expenditure incurred by the Municipality on roads and similar public conveniences.—*G. R. No.* 3227, *Oct.* 21, 1875.

31. If it be desired to tax vehicles plying for hire, this can best be effected by a license and number clearing all tolls. It is not expedient to check the supply of such carriages by tolls on every trip, and a toll being in itself a nuisance, the less frequent the collections the better.—*G. R. No.* 991, *June* 5, 1865.

32. The payment of a wheel-tax should exempt carts from tolls on entering the town.—*G. R. No.* 3100, *Oct.* 26, 1871.

33. Government will not sanction the levy of transit duties on cotton or on any other commodity passing through the limits of a Municipality, nor an exceptional toll on carts containing any particular articles. If carts conveying cotton and similar commodities cause particular injury to the roads, an extra uniform toll should be put on each laden cart, but not on the separate articles it may contain.—*G. R. No.* 298, *Feb.* 6, 1866; *No.* 3017, *Dec.* 21, 1869; *No.* 3099, *Oct.* 26, 1871; *and No.* 1637, *May* 24, 1876.

34. If any tolls are to be levied, they should be general on all articles and beasts, and not be confined to market days.—*G. R. No.* 3099, *Oct.* 26, 1871.

NOTE.—For rules as to tolls generally see Chapter XVIII.

35. **Objectionable taxes.**—A tax on head loads cannot be sanctioned unless it is proved that exemption would be made use of to evade the municipal revenues.—*G. R. No.* 1953, *June* 28, 1876.

36. It is objectionable that the coarse kinds of grain which are the food of the lower classes should be subject to the same duty as the higher descriptions.—*G. R. No.* 1284, *May* 29, 1869.

37. The imposition of a tax on carts plying for hire only, and on inferior grains, while private vehicles and rice and paddy are exempted, cannot be sanctioned, as being too palpably in favour of the richer classes.—*G. R. No.* 3667, *Oct.* 27, 1873.

38. A tax upon coal was negatived, as it would fall on a small section of the community only, and would affect the progress of

industries which are of great benefit to the district.—*G. R. No.* 2458, *Oct.* 12, 1870.

39. A proposal to impose a tax on gold and silver was negatived, on the ground that it could be most easily evaded, and would afford the contractor and his subordinates full opportunity to harass and annoy the public.—*G. R. No.* 1970, *July* 20, 1871.

Raw silk and cotton yarn cannot be legitimately held to come under the designation of "Piece Goods and other Textile Fabrics," which clearly denote manufactured articles and not raw or unmade-up materials. The imposition, accordingly, of Municipal octroi duties upon raw silk and cotton yarn appears to be objectionable and opposed to the orders of the Government of India.—*G. R. No.* 1969, *June* 29, 1878.

The levy of octroi duty on spun skein silk is not allowed.—*G. of I. No.* 3780, *Dec.* 18, 1878.

The levy of octroi duties on country spirits imported into, and consumed in, Municipalities, may be continued during the year 1879-80 in those towns where it has heretofore been practised. But the future arrangements in respect to the Municipal revenue of these towns should be made on the hypothesis that octroi duties on exciseable articles will not be continued after the close of the year 1881-82.—*G. of I. No.* 28, *Feb.* 6, 1879.

40. **House tax.**—Where a house tax is levied, the power given to the Commissioners to exempt from it those upon whom its imposition may be considered a hardship should prevent the occurrence of any oppression. There should be no hesitation in exercising this power of exemption in all cases where want of adequate means is satisfactorily made out.—*G. R. No.* 187, *Jan.* 11, 1872.

41. **Halalcore tax.**—The only fair way of imposing a halalcore cess is to make those who enjoy the benefit pay for the service. If the mode of assessment is found inconvenient and insufficient to pay for the service, the proper remedy is to increase the charge upon the owners and occupiers of houses to which privies are attached. Care should be taken that the work of the municipal sweepers is effectively performed at the dwellings of the poor as well as at those of the rich.—*G. R. No.* 598, *Feb.* 28, 1871, *and No.* 1726, *June* 27, 1871.

42. **Dog tax.**—The experiment of a tax on dogs was sanctioned at Carwar, at the rate of Rs. 1½ for each license.

The cost of destroying unowned and uncared for dogs should be defrayed by Municipalities.—*G. R. No.* 2761, *Nov.* 19, 1870, *and No.* 3601, *Nov.* 22, 1872.

43. **License tax on sales.**—If a license fee on the sale of tobacco, betel leaves, and snuff is sanctioned, the Commissioners cannot prevent people from selling these things, but can only tax them if they do.—*G. R. No.* 1403, *May* 4, 1876.

44. **Changes in taxation.**—Changes in taxation can only be made in accordance with sec. 21 of the Act. When changes are proposed it should be stated that the procedure there laid down has been followed.—*G. R. No.* 1752, *June* 12, 1875.

45. **Restrictions on farmers.**—When Municipal revenues are farmed the farmers are to be bound down to keep and produce when required by the Commissioners detailed accounts of receipts under each head of taxation.—*G. R. No.* 3672, *Sept.* 18, 1872.

46. **Municipal works.**—The sanction of Government is not necessary before the commencement of works entered in Municipal Budgets.—*G. R. No.* 135 *of* 1867.

47. The repair of police chowkis in municipal limits is strictly a municipal charge in the interests of public safety, and Government has levied this charge from the Ahmedabad Municipality under sec. 24, cl. 1, para. 1, of the Act.—*G. R. No.* 958, *March* 22, 1878.

48. The contribution of 15 per cent. for establishment is levied on contributions received from Municipalities for works executed by the Public Works Department.—*G. R. No.* 108*A*—172, *March* 25, 1875.

49. The contribution of 15 per cent. is payable by Municipalities for municipal works carried out by the P. W. Department, but not on account of municipal contributions to provincial works: where works are partly municipal and partly provincial it should be ascertained to which head the liability primarily relates.—*G. R. No.* 145*A*—216, *April* 16, 1875.

50. **Water supply.**—Considering the facilities that are now afforded to Municipalities to raise money, there is no valid reason why every large town should not possess the blessing of a plentiful and wholesome water supply. It is perhaps the one object

for the attainment of which the people will readily submit to extra taxation. It is only fair and reasonable that the requisite outlay should not be a charge on revenue, and that merely a sufficient sum should be provided to defray the annual interest on the capital expended.

While anxious to urge on the attention of Municipalities the prosecution without delay of these important works, His Excellency in Council is fully alive to the risk of undertaking immature and hastily considered projects, and that the best advice and assistance may be procurable, the Chief Engineer for Irrigation should be informed that the Government regard the supply of water to towns to be a matter of equal importance with that for agricultural purposes, and be requested to attend as far as possible to any requisitions he may receive from the Collectors and Magistrates of Districts for making surveys and estimates.—*G. R. May* 10, 1873.

51. **Exemptions.**—Under Section 24 of Act III. of 1880 (The Cantonments Act, 1880), in any cantonment situated in British India which may have been, or may in future be, brought under the operation of a Municipal Act, the following classes of persons are, when on duty in such cantonment, exempted from the operation of taxes of the following kinds :—

Persons exempted.

All persons exclusively in military employ or belonging to any department directly attached to the Army or to the Public Works Department, Military Branch, being persons subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War.

Taxes from the operation of which exemption is granted.

(1) Municipal taxes on salaries.
(2) Municipal taxes on professions, trades, callings, offices, or appointments.
(3) Municipal taxes on horses, mules, or ponies kept for military duty.
(4) Municipal tolls leviable on any ferry or road in respect of animals or vehicles kept or used for military duty.

2.—In further exercise of the power conferred by the same section, the Governor-General in Council is pleased to prohibit the levy, in any cantonment in British India, of any Municipal tax whatsoever on public property, such as animals or vehicles.

3.—In this order the expressions "Municipal Tax," "Municipal Taxes," and "Municipal Tolls" include any tax or toll imposed by virtue of the provisions of a Municipal Act under the operation of which any cantonment may have been, or may in future be, brought. —*G. of I. No.* 163, *Nov.* 18, 1881.

Under sec. 3 of Act XI. of 1881, the levy of the taxes named in para. 1 of the above order from the persons named in the same para., if compelled by the exigencies of military duty to reside within the limits of a Municipality, is prohibited.—*G. of I. No.* 162, *Nov.* 18, 1881.

52. Rules under Act XI. of 1879—Local Authorities Loan Act—

In exercise of the powers conferred by Sections 5 and 7 of the Local Authorities Loan Act, 1879, the Governor-General in Council has made the following Rules for the raising of loans by Local Authorities in the open market :—

1. These rules shall come into force on the 1st day of September 1883. On and from that date the rules published with Notification No. 3745,* dated 8th November 1879, in so far as they relate to the authorisation of loans, shall be rescinded except as regards loans authorised before these rules come into force.

* Republished at pages 879 and 880 of the *Bombay Government Gazette*, dated 13th November 1879, Part I.

2. In these Rules (1) 'The Act' means 'The Local Authorities Loan Act, 1879,'; (2) 'Local Authority' and (3) 'Funds' have the meanings assigned to them respectively in the Act ; (4) 'The Local Authority' means 'The Local Authority applying for permission to raise or, as the case may be, raising or having raised the loan' ; and (5) 'Loan' means 'A Loan under the Act.'

3. A loan must be defined in rupees and not by the sterling or any other foreign standard.

4. No loan shall be raised except for the construction or repair of works of public utility within the local limits of the jurisdiction of the Local Authority, or for the benefit of the inhabitants within those limits.

5. Whenever it is desired to obtain the authorisation of the Government to the raising of a loan under Section 7 of the Act a statement shall be submitted to the Local Government showing—

Rules under Act XI. of 1879—(*contd.*)

1*st*, the work or works for the construction or repair of which the loan is required, and an estimate of the cost thereof:

2*nd*, the amount which it is proposed to borrow:

3*rd*, the fund or funds on the security of which it is proposed to borrow:

4*th*, the law or laws under which the said fund or funds is or are levied, received or held:

5*th*, the period for which the loan is required, the number and amount of the instalments, if any, in which it is proposed that the loan shall be taken, the dates proposed for receiving such instalments, and the instalments, if any, in which it is proposed to repay the loan:

6*th*, the yearly proceeds of each of the funds received or held by the Local Authority:

7*th*, all expenditure incurred by the Local Authority in each of the three last preceding years;

8*th*, all existing prior charges upon the funds of the Local Authority.

6. The Local Government shall cause such enquiry as it thinks necessary or expedient to be made into the statements contained in the application and into the use and value of the proposed work.

7. If it appears to the Local Government that the loan ought not to be raised, it shall reject the application.

8. If it appears to the Local Government probable that the loan ought to be raised, it shall cause to be published in the local official Gazette, and otherwise, as it deems fit, within the local limits of the jurisdiction of the Local Authority, a copy of the application and such particulars in regard to any enquiry made under Rule 6 as it may think necessary.

9. After the expiry of one month from such publication, and after calling for any further information which it may require, and considering any objections which may be preferred, the Local Government may either reject the application, or refer it for the orders of the Governor-General in Council.

10. The Local Government shall make such provision as may seem to be necessary for the proper inspection of all works which are being carried out by means of a loan, and for ascertaining and securing that the loan is duly applied to the purposes for which it

is raised. Every such work, and the accounts connected therewith, shall be open at all times to the inspection of the Superintending or Executive Engineer in whose division the work is situate, and of any person who may be authorised to inspect the accounts of the Local Authority, and of any other person specially authorised by the Local Government in this behalf.

11. The cost of any enquiry made under Rule 6, of advertisements published under Rule 8, of inspections made under Rule 10, and of any other proceedings by order of the Local Government or the Governor-General in Council under these Rules, shall be determined by the Local Government, and shall be paid by the Local Authority.

12. The Local Authority shall give to the Accountant General and the Local Government any information which they may require regarding the expenditure of the loan, and regarding its funds.

13. An attachment of any funds under Section 6 of the Act shall be made by a notice to the Local Authority prohibiting the collection or management of such funds by the Local Authority, and vesting the administration thereof in such officer as the Local Government may appoint. Such notice shall be published in the local official Gazette, and otherwise, as may be directed by the Local Government, within the local limits of the Local Authority. The moneys collected or received under such attachment shall be paid to the lender, and the accounts of moneys so collected, and of the cost of collection, shall be prepared in such form as the Local Government may from time to time direct. A copy of the accounts shall be delivered to the Local Authority, and published in the local official Gazette."

"No. 2749.—In exercise of the power conferred by Section 5 of the Local Authorities Loan Act, 1879, the Governor-General in Council has made the following Rules for the grant of loans to Local Authorities by the Government:—

1. These Rules shall come into force on the 1st day of September 1883. On and from that date the rules published with Notification No. 3745,* dated 8th November 1879, in so far as they relate to the granting of loans, shall be rescinded except as regards loans granted before these Rules come into force.

* Republished at pages 879 and 880 of the *Bombay Government Gazette* dated 13th November 1879, Part I.

Rules under Act XI of 1879—*(contd.)*

2. In these Rules (1) 'The Act' means 'The Local Authorities Loan Act, 1879'; (2) 'Local Authority' and (3) 'Funds' have the meanings assigned to them respectively in the Act; (4) 'The Local Authority' means 'The Local Authority applying for or, as the case may be, receiving or having received the loan'; and (5) 'Loan' means 'A Loan under the Act.'

3. A loan must be defined in rupees and not by the sterling or any other foreign standard.

4. No loan shall be granted except for the construction or repair of works of public utility within the local limits of the jurisdiction of the Local Authority, or for the benefit of the inhabitants within those limits.

5. Without the consent of the Government of India, no loan shall be granted to any District Committee for the construction of any public work, unless it be estimated that a direct net revenue will be derived therefrom equal to at least four per centum per annum on its capital cost. Provided, however, that the Local Government may make a loan, not exceeding Rs. 5,000, to a District Committee, for a work designed especially to employ labour for the purpose of relieving distress.

NOTE.—A District Committee does not include a Municipal Body.

6. An application for a loan shall state—

1*st*, the work, or works, for the construction or repair of which the loan is required, and an estimate of the cost thereof:

2*nd*, the amount which it is proposed to borrow:

3*rd*, the fund or funds on the security of which it is proposed to borrow:

4*th*, the law or laws under which the said fund or funds is or are levied, received or held:

5*th*, the period for which the loan is required, the number and amount of the instalments, if any, in which it is proposed that the loan shall be taken, the dates proposed for receiving such instalments, and the instalments, if any, in which it is proposed to repay the loan:

6*th*, the yearly proceeds of each of the funds received or held by the Local Authority:

7*th*, all expenditure incurred by the Local Authority in each of the three last preceding years:

8*th*, all existing prior charges upon the funds of the Local Authority.

7. The Local Government shall cause such enquiry as it thinks necessary or expedient to be made into the statements contained in the application and into the use and value of the proposed work.

8. If it appears to the Local Government that the loan ought not to be granted, it shall reject the application.

9. If it appears to the Local Government probable that the loan ought to be granted, it shall cause to be published in the local official Gazette, and otherwise, as it deems fit, within the local limits of the jurisdiction of the Local Authority, a copy of the application and such particulars in regard to any enquiry made under Rule 7, as it may think necessary.

10. After the expiry of one month from such publication, and after calling for any further information which it may require, and considering any objections which may be preferred the Local Government may either reject the application, or, subject to the provisions of Rule 11, grant the loan, or refer the application for the orders of the Governor-General in Council.

11. (*a*) Save as provided in Clause (*b*) of this rule, the Local Government may make a loan from any sums which the Governor-General in Council allots for the purpose.

(*b*) If the loan exceeds Rs. 5,000, the previous sanction of the Governor-General in Council is necessary.

12. The Local Government shall make such provision as may seem to be necessary for the proper inspection of all works which are being carried out by means of a loan, and for ascertaining and securing that the loan is duly applied to the purposes for which it is made. Every such work, and the accounts connected therewith, shall be open at all times to the inspection of the Superintending or Executive Engineer in whose Division the work is situate, and of any person who may be authorised to inspect the accounts of the Local Authority, and of any other person specially authorised by the Local Government in this behalf.

13. If the Local Government considers that the conditions on which a loan was granted have not been fulfilled, or that the Local Authority has failed to comply with any of the requirements of these Rules, it may, at any time, order that no further payments shall be made on account of such loan, and recover the amount

Rules under Act XI. of 1879—(*contd.*)

advanced, with interest thereon, in the manner prescribed by Section 6 of the Act.

14. Interest shall be charged half-yearly on each loan at the rate agreed upon; and shall be reckoned and paid on each instalment from the date on which it is received.

15. The Local Authority may, at any time with the previous consent of the Local Government, repay the whole or any part of a loan made from the Public Treasury in advance of the periods fixed by the conditions of the loan.

16. The cost of any enquiry made under Rule 7, of advertisements published under Rule 9, of inspections made under Rule 12, and of any other proceedings by order of the Local Government or the Governor-General in Council under these Rules, shall be determined by the Local Government, and shall be paid by the Local Authority.

17. (*a*) The accounts of every loan shall be kept by the Accountant General of the Province in which it is made.

(*b*) The Local Authority shall give to the Accountant General and the Local Government any information which they may require regarding the expenditure of the loan and regarding its funds.

18. An annual statement of all loans granted under the Act, repayments due and made during the year, and balances outstanding at the beginning and end of the year in each Province, or under each Local Government, shall be prepared by the Accountant General and submitted to the Government of India through the Local Government, which shall add a report of the progress of the works. Such statement shall be published in the local official Gazette.

19. An attachment of any funds under Section 6 of the Act shall be made by a notice to the Local Authority prohibiting the collection or management of such funds by the Local Authority, and vesting the administration thereof in such officer as the Local Government may appoint. Such notice shall be published in the local official Gazette, and otherwise, as may be directed by the Local Government, within the local limits of the Local Authority. The moneys collected or received under such attachment shall be paid into the Government Treasury; and the accounts of moneys so collected, and of the cost of the collection, shall be prepared in

such form as the Local Government may from time to time direct. A copy of the accounts shall be delivered to the Local Authority, and published in the local official Gazette.—*G. of I. No.* 2748, *Aug.* 7, 1883; *B. G. No.* 3091, 22*nd idem.*

53. In making applications for loans to Municipalities under Act 24 of 1871 (XI. of 1879), the reports of the officers of the P. W. Department on the schemes must be forwarded.—*G. of I. No.* 12, *Feb.* 17, 1876.

54. **Contributions from Local Funds.**—The fact of a town having a Municipality, should not absolutely deprive it of a claim to expenditure from Local Funds, if the town *also* contributes to Local Funds: there should be no distinction between villages and towns in this respect: a large town probably contributes more to Local Funds than a small village.—*G. R. No.* 34*A*—49, *Feb.* 5, 1878.

55. **Rewards to Municipal Servants.**—No Municipality shall vote a reward to any servant employed by them except with the previous sanction of the Divisional Commissioner, and in cases where the proposed gratuity exceeds one year's pay of the officer whom it is proposed to reward, the consent of the Local Government shall be previously obtained.—*G. R. No.* 389, *Feb.* 7, 1877.

56. **Penalties.**—A person is not liable to a penalty for non-payment of Municipal rates, though the rates are recoverable as a penalty.—*High Court Ruling, Sept.* 11, 1873.

NOTE.—This ruling apparently applies to rates, &c., under the present Act: see Sec. 84.

57. Penalties for unpunctual payment of rates, cesses, &c., cannot be legally enforced, and will therefore not be sanctioned.—*G. R. No.* 758, *March* 12, 1875.

58. **Deceased Paupers.**—All legitimate expenses incurred by a Municipality in disposing of the bodies of paupers dying within its limits should be repaid to the Municipality by Government.—*G. R. No.* 1675, *May* 8, 1882.

59. **Birth and Death Registration.**—The Bombay Municipal Act provides for reports of births and deaths being made compulsory, but it does not appear that the provision has been

strictly enforced. It has also been ordered that bye-laws should be made by all mofussil municipalities to the same effect. His Excellency in Council trusts that an effort will now be made to carry out the law. The system of paying midwives and others small gratuities for reporting births must be abolished, as also the system of sending municipal officers to obtain information. Unless the people see that the responsibility of reporting births and deaths rests upon them, the law and bye-laws will inevitably remain a dead letter. It should be generally made known that an occupant of the house or a member of the family in which a birth or death occurs is bound to report the occurrence at the Municipal Office or other place appointed for the purpose, places being appointed in the larger towns with the view of putting the people to as little inconvenience as possible, and prosecutions should be instituted in case of any neglect to comply with the law being discovered. Government have no doubt that this course will eventually bring about more correct registration at a small cost, and although prosecutions may be unpalatable, the necessity for them will rapidly diminish.—*G. R. No.* 1297, *April* 2, 1882.

All Municipal Executive officers appointed for the time being as such under the provisions of the Bombay Municipal Acts of 1872 and 1878 and the Bombay District Municipal Act of 1873, in receipt of a salary not less than Rs. 10 per mensem and being on the permanent establishment, are invested with powers under Section 37 of the Bombay Abkári Act, 1878, in addition to the powers and duties incident to their respective principal offices.—*G. Not. No.* 6700, *Sept.* 27, 1882.